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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YURIDIA S.,

Petitioner,

v.

THE SUPERIOR COURT OF  
CALIFORNIA, COUNTY OF ORANGE,

Respondent;

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Real Party In Interest.

G043941

(Super. Ct. No. DP014081)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Writ denied.

Juvenile Defenders and Susan Do for Petitioner.

Nicholas S. Chrisos, County Counsel; Karen L. Christensen, Deputy  
County Counsel for Real Party in Interest.

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Orange County Social Services Agency (SSA) filed a Welfare and Institutions Code section 387<sup>1</sup> petition after Yuridia S. (Mother) absconded with her special needs son, Jesus C., to North Carolina following a tumultuous two years of family maintenance services. The juvenile court denied Mother reunification services and removed Jesus from her custody. In this writ petition, Mother contends there was insufficient evidence of danger to support the order removing Jesus from her custody. We conclude the contention lacks merit, and we deny the writ petition.

## I

When Jesus was four years old he was taken into protective custody after a person reported Jesus was seen chewing on a small plastic bag filled with a white powdery substance and he was often left unattended. The person making the report stated Mother's response to the situation was to laugh and state it was probably drugs. The social worker was shown photographs of Jesus biting a plastic bag, and other photographs of him with a white substance covering his clothes, hands, and mouth. Mother admitted she had found Jesus playing in the bathroom sink with white powder on his clothes. She found a plastic bag in her living room, and after tasting its contents, her mouth felt numb and she felt nauseated. She did not seek medical attention for Jesus. The police reported the baggie contained cocaine.

Jesus was developmentally delayed, legally blind, not potty trained, and had serious behavioral issues. He had a history of biting others and screaming uncontrollably. One of Mother's roommates reported Mother often allowed Jesus to walk in the front yard by himself. Mother explained she allowed Jesus to play outside

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

because she wanted him to learn to be independent. She admitted it was difficult to provide for her son, and she had a hard time coping with caring for a special needs child. Jesus did not sleep well and food was scarce. Mother recognized she did not understand the extent of her son's medical conditions, but she was afraid to take him to a doctor and she lacked medical insurance. Mother agreed she could benefit from counseling.

Mother stated she missed medical appointments and school meetings because she did not have the time or transportation to attend them. Mother was not employed, but survived by cleaning, babysitting, and managing a home in exchange for food and a place to live. She had been receiving free diapers from Regional Center but now Jesus was too old to receive that service and a tenant of the house was providing the diapers. Mother stated she did not have family members living in the United States. She relied on two friends for help.

The social worker observed Jesus was clean and active, but very thin. Mother interacted with Jesus in a loving and appropriate manner, and he responded to her the same way, seeking her attention. The social worker and the Public Health Nurse, April Orozco, met with Jesus's teacher, Annee Hartzell. Jesus's classroom was for blind children and his teacher, Hartzell, was blind as well. Hartzell stated she was concerned Jesus had difficulty walking, he did not appear to have experience with toys, he had a limited vocabulary, he was not potty trained, and he appeared to lack daily stimulation. Hartzell believed neglect and the lack of parenting skills contributed to some of Jesus's problems. She opined the child's difficulty with walking was a sign he was often carried and not taught to walk. Hartzell said Mother admitted she isolated the child and did not let him walk for safety reasons. Mother told Hartzell she did not interact with Jesus, and they were too poor to afford toys. Hartzell opined Jesus was functioning at the level of a two-year-old. Hartzell had recently purchased Jesus a walking cane, and she was teaching him how to use it.

Orozca and the social worker made an unannounced home visit. During their conversation with Mother, the social worker noticed Jesus had three two-inch nails in his mouth that he had found on the window seal. The social worker learned Jesus was born extremely premature (26 weeks gestation) and he was diagnosed with glaucoma, bilateral cornea opacification, bilateral calcification, and congenital bilateral dysgenesis. Mother left Jesus's father after he hit her and threw then eight-month-old Jesus on the bed and his whereabouts were unknown.

On September 20, 2006, Jesus was placed at Orangewood Children's Home (Orangewood) following an unsuccessful placement with Hartzell. At Orangewood he was evaluated and it was determined he had been neglected, and he may have adjustment disorder, pervasive developmental disorder, mental retardation, and blindness.

The social worker recommended Mother receive reunification services. Mother denied most of the allegations in the petition, and denied Jesus had the baggie of cocaine in his mouth. However, at the hearing she pled no contest to an amended petition. The court declared Jesus a dependent of the court and ordered Mother receive services.

In a report prepared for the six-month review hearing, the social worker recommended further reunification services. Jesus was placed in a foster home. In compliance with her case plan, Mother had completed a parenting class, she was attending individual therapy, and she had a full-time job. She enjoyed monitored visits three times a week. However, Mother stated she was tired of drug testing and maintained she did not have a drug problem. She had several negative tests, but twice she refused to test.

In January 2007, social worker Evacel Ortuno informed Mother she needed to make further progress with her case plan and she must give SSA notice if she moved. Mother was referred to a second parenting class. It was reported Mother had unstable housing.

Jesus was taking melatonin to address his problem of sleeping during the day and staying awake at night because he could not perceive light. He was diagnosed with having complete retinal detachment in both eyes, glaucoma, corneal opacification, orbital hypoplasia, and enophthalmos (sunken eyes), all which rendered him completely blind. At school he had an Individualized Education Plan (IEP) calling for occupational and individual therapy. Jesus enjoyed listening to music and singing. He was affectionate and liked to touch and smell people's hands as a way to identify them. After several months, Jesus was sleeping better at night and he was taken off melatonin.

Mother enjoyed consistent monitored visits during the first six months of dependency. She taught her son numbers, letters, and songs. She also fed and played with him. She missed one IEP meeting, claiming her employer would not let her leave work. She did not want Ortuno to call her employer to explain the importance of the IEP meetings. During one visit in March, Mother left Jesus unattended for 30 minutes. The monitor noticed that during a visit in April, Mother "spaced out" during the last half of a visit. At the six-month review hearing, the court ordered further reunification services for Mother.

In a report prepared for the 12-month review hearing, the social worker stated Mother had completed her individual counseling and achieved her treatment goals by demonstrating positive changes and motivation. She received only a certificate of attendance from her second parenting course because she had difficulty recalling skills she had been taught. In July, the child's caretakers noted Mother was more affectionate and interested during the visits. Mother was permitted four and one-half hours of unmonitored visits per week and one hour of monitored visits. Overnight visits were made dependent on whether Mother relocated again. She was moving residences approximately once a month. Ortuno referred her for housing assistance, Family Preservation Services (FPS), and childcare assistance. Mother did not drug test in April

and May 2007. She missed one test in June. She consistently tested negative in July and August 2007.

In September 2007, Jesus was released to Mother on a 60-day trial visit. He began attending a different school, Cook Elementary, where he was making good progress. Although he did not enjoy playing with other children, he liked listening to music and singing. His behavior improved as he settled into his new home and school. Mother was able to calm him. Mother volunteered at the school to help Jesus with the transition. In November 2007, the social worker recommended and the court ordered Jesus be placed with Mother under a family maintenance plan. At this point, Mother had been receiving services for approximately 14 months (September 14, 2006, to November 30, 2007).

#### *Family Maintenance Period*

At the first section 364 review hearing held in May 2008, the social worker recommended continued family maintenance services. Mother showed improvement by being willing to take Jesus to the doctor when he was sick. Mother received the following services: FPS, FPS nursing services, Wraparound services in-home, and Regional Center in-home services. Mother also received in-home parenting services. It was reported Mother was resourceful, open to services, and following through on suggestions. Mother continued to randomly drug test. She complained about her childcare calling her at work to pick up Jesus, when he did not appear to be sick. Ortuno suggested finding a new childcare provider.

Jesus was making some improvements at school, but his aggressiveness had increased. He was tired at school and his sleep pattern was disturbed by Mother's late work hours. Mother often could not spend time with him after school due to her work schedule. Ortuno met with Mother to express concern about Mother prioritizing her work and minimizing her son's medical needs. Mother stated, "[I]n the eyes of social services I'm not a good mother, but I want to keep my child and I'm trying my best. I'm the sole

provider and my work is essential to pay for rent and other utilities.” Ortuno praised Mother for her efforts but explained she needed to make Jesus’s medical care and safety her priority.

In March 2008, Mother reported her landlord was complaining about the number of people visiting the apartment and Mother was concerned she would be asked to leave. She explained the landlord did not understand the child’s need for in-home services. Mother was being cooperative and SSA offered to speak to the landlord as well as begin searching for other residences.

In May 2008, the parties stipulated to, and the court ordered, further supervision and family maintenance services. The court ordered SSA to assist Mother with housing and child care, a basic needs referral, and a \$300 payment for daycare.

The second 364 review occurred the following month. On June 30, 2008, SSA requested the review hearing because Mother was being uncooperative and resistant with the services being offered. Mother told a social worker she was moving in July without SSA’s approval of her new home (such as Live Scans of adult co-tenants or a home inspection). Mother stated, ““You can take my child if you want.” The court set a hearing for July.

In a later and more detailed report, social worker Griselda Damian stated Mother contacted her and left messages on May 12 and 13, stating she needed to move. Damian spoke to Mother on May 16, and Mother requested authorization to move. The landlord wanted Mother out of the apartment by the end of the month because the landlord was afraid of all the SSA workers who come to Mother’s apartment each week. Damian told Mother she needed to wait until Ortuno returned. Mother stated she could not wait because she was a renter not a landlord. Mother stated she did not know why SSA made it “impossible for her to do what she has to do to move forward with her child.” Mother requested a new social worker for her case, stating Ortuno did not help her. Mother stated she wanted someone to inspect the garage where she would like to

move, and she noted the adults at the new residence were willing to submit to Live Scans. Arrangements were made with the landlord for Mother to stay at the apartment one more month.

On May 28, 2008, social worker Heather Morton visited Mother. She reported the home was clean, and the room Mother shared with Jesus was small, containing a twin bed and a small chest. Clothing was neatly folded in the closet. The social worker told Mother she would receive assistance purchasing a second bed for Jesus. Morton asked why the child was not home when Mother had promised beforehand he would be there. Mother stated Jesus had missed school for a previous court date and he should not miss anymore school.

Morton visited Jesus at his school. He was playing happily, interacting with staff, and using his red tipped cane. The teacher reported Jesus is more verbal, and he enjoyed his routine at school. The teacher opined, “[Jesus] is very dependent on home environment and it strongly affects his behavior and success rate in school.” He explained Jesus does well when things are going well at home, and poorly at school when things are difficult at home.

On June 3, 2008, Mother told the social worker there was no space in her room for another bed. The social worker reminded Mother the bed was ordered by the court and it needed to be placed in her room. Mother was told a senior social services supervisor would be visiting to ensure the bed was properly delivered and received by her. Mother later refused Wraparound services’ offer of a \$100 clothing allowance.

On June 13, Mother reported she needed to move out by the end of the month and she provided SSA a new address in Garden Grove. The social worker advised Mother she was not authorized to move out until the new home was evaluated and all the adults were Live Scanned. Mother stated she was going to do whatever was best for Jesus, and she would move without SSA’s approval. That same day, Jesus’s teacher reported Mother was late to pick up her son. Moreover, Jesus had worn dirty clothes to



school that day. The teacher noted Mother no longer visited the child at school to learn what new techniques were being taught. The school bus driver stated Mother had been late to pick up Jesus.

When Ortuno visited Mother on June 18, Mother had a negative attitude and became verbally aggressive when questioned about Jesus's dirty clothing. Ortuno spoke with Jesus's teacher that day and was informed the child was clean and dressed appropriately. Ortuno gave Mother a list of drug test sites, reminding her there was a court order to random drug test. Mother stated, "I told you that I'm not a drug addict and I will not comply with this order."

On June 25, Mother confirmed she had the Live Scan forms, but she was not able to give them to her new co-tenants. Mother reiterated she would move without SSA's consent. On July 3, Mother reported the Live Scan appointments were scheduled. SSA approved the new residence on July 18. At the section 364 hearing, the court accepted the parties' stipulation to continue the hearing to November.

In the next status review report, the social worker noted Jesus had changed schools and was attending Heritage Elementary School in Santa Ana. He participated in a special education program. His vocabulary skills were improving. He often refused to leave school when Mother arrived to take him home. The social worker stated Mother's compliance with the case plan was minimal. Mother had been uncooperative at school, and appeared detached from Jesus. She was often on her cell phone and ignored her child. One time she was on the cell phone and failed to notice Jesus had dropped his backpack while crossing the street. Jesus was losing weight and only had a patch of hair. When confronted, Mother became argumentative. She accused Ortuno of not listening to her and not noticing the good things she did for Jesus. Mother started to cry and afterwards refused to speak to Ortuno.

In October 2008, Jesus received a burn on his forehead from a lamp in Mother's bedroom. Ortuno discussed with Mother the need to seek immediate medical

care and the need for accident prevention. Mother became upset and attempted to blame others for her problems.

In her report, Ortuno recommended additional family maintenance services. She noted Mother wanted the dependency case to end. Mother expressed she wanted her child to receive appropriate services, but she believed SSA was not helping and only making her life more stressful and complicated. However, Ortuno concluded Mother “continues to minimize the child’s medical needs and continues to make false allegations that [SSA] is not providing adequate services for the family and false allegations about other service providers. Although, [Mother] reports that she wants the best for the child and wants to be dedicated to his well-being, her behavior says otherwise as evidence of her being uncooperative and resistant with services being offered. It appears [Mother] does not understand the intensive care that the child requires.”

Ortuno noted Mother’s housing situation continued to be unstable. Mother currently required services from Family Preservation Community Services, Wraparound, Regional Center, Behavioral Workshops, Respite, and the Children’s Home Society for childcare. Jesus was having difficulty adjusting to his new school. He was aggressive, slept during the day, and avoided physical education activities. An in-home service provider expressed concern Mother was not implementing a daily routine and Jesus was regressing on skills that had been mastered. Mother was not eligible for housing assistance because she and Jesus were not legal residents. Mother attended behavior management workshops because Jesus was having problems screaming, taking off his shoes, and removing his harness on the school bus. In October, Mother moved again, and Ortuno approved the home. Ortuno requested a new bed for Jesus because Mother had gotten rid of the last one allegedly due to cockroaches.

At the hearing on November 21, 2008, the parties stipulated to SSA’s recommendation of continued jurisdiction and family maintenance services. The court appointed an educational attorney for Jesus and ordered a \$150 clothing allowance.

In the next progress review report prepared in January 2009, the social worker noted there were still concerns about the family's situation and SSA's ability to help was complicated by the fact Mother was being extremely uncooperative. In November during an IEP meeting, Mother requested in-home toilet training services and additional pull-up diapers. Mother also reported Jesus obtained a bruise on his leg from childcare. She requested a new childcare provider. The social worker noted that throughout the meeting Mother rolled her eyes, especially when she was asked to sign forms.

Jesus was still sleeping during the day and was awake at night. He was on a waiting list for a behavioral therapist. At school he received several different kinds of services to address his many issues. The instructional assistant was working with Jesus to address his behaviors of taking off his shoes and socks, uncontrollable laughter, resisting standing, and dropping to the ground after he got off the school bus. Jesus responded well to food reinforcers to encourage compliant behavior. Mother reported Jesus was always dirty, and she blamed the school or the childcare facility.

It was discovered Mother lied about how much she was paying in rent. Ortuno was concerned about her financial situation. The Wraparound team worked with Mother on a budget and gave her a new lamp and a small refrigerator. The landlord reported Mother had a new male friend and Mother refused to answer Ortuno's questions about this relationship. In December, Mother informed Ortuno she planned to move closer to her work. Ortuno explained frequent moves were having a negative impact on Jesus. Ortuno reported Mother did not seem to comprehend Jesus tended to regress when there was an interruption of services. In any event, a new home was approved at the end of December. Ortuno opined, "[Mother's] inconsistency and unstable living situation makes it very difficult to assess the outcomes. It appears that [Mother] is focusing on her own needs first and avoids responsibility by relocating and blaming other people."

The May 2009 status review report expressed the same concerns about Mother's financial instability and unstable living situation. Mother notified SSA she was moving again. Jesus's vocabulary had improved and he was physically developing on target. Mother had been consistent with his medical and dental appointments.

Wraparound recently referred Jesus to private singing lessons. However, Ortuno noted Mother's cooperation with her case plan was minimal. Ortuno spoke to her about the need to improve her communication skills to avoid alienating other people, such as her prior landlord. The Wraparound team also expressed they were concerned Mother was not cooperating with them and she tended to isolate herself. Ortuno stated Mother was attempting to isolate Jesus too, and Mother refused to take him for walks after school.

In February and March 2009, Mother was praised for being more cooperative. Mother enrolled Jesus to sing in the church choir. However, she requested to transfer Jesus to Mark Twain Elementary School because she felt the prior school failed to meet her child's needs. She removed the bed that had been given to her, saying it broke. Mother rolled her eyes when she was told to remove medication from her child's reach.

Mother moved in May 2009 prior to SSA's authorization. In her report, Ortuno stated, "[SSA] continues to be concerned about [Mother] and her ability to provide consistent appropriate care for the child. She has periods of time when it appears that she is making progress, followed by periods of time when she is very oppositional, defiant, and resistant to the services being provided to her and the child by the child's school, Wraparound team and the [SSA]. She has not maintained a stable residence for her and the child. Since July 2008, she has relocated on four different occasions with the child. Prior to each occurrence, [Mother] was directed . . . to have the potential roommates Live Scanned. On all occasions, she was resistant to do so this possibly putting the child at risk by not knowing (and [being] seemingly unconcerned) if the roommates had any criminal history. She has been [resistant] to services and has also

discarded furniture that was provided to her . . . .” Ortuno noted that whenever Mother is asked to correct a behavior, Mother responds by being defiant and oppositional. Ortuno believed Mother’s attitude was not just about fighting the “system” but due to Mother’s apparent “inability to protect her child from possible risk.” Ortuno stated if Mother did not have her roommates scanned within the next week SSA would consider detaining the child.

At the hearing in May 2009, the court continued jurisdiction with family maintenance services. The court ordered Mother to participate in drug testing up to three times per week “upon reasonable suspicion Mother has used or under the influence of controlled substance or if Mother has a positive, dilute or failed to test.”

The October 2009 status review report recommend continued family maintenance services despite Mother’s minimal level of cooperation with the case plan. In August, Mother moved again. On a positive note Mother was still employed full-time and Jesus had made some progress with his issues. Seven-year-old Jesus was able to communicate his wants and needs to his mother. He was finally potty trained.

In September 2009, Mother requested Wraparound services be terminated. Mother stated she was overwhelmed with her work schedule, and she felt she had obtained the necessary tools and techniques to continue being independent and self sufficient. She refused Ortuno’s referrals to the Blind Children Learning Center, In-home Support Assistance, Shelters in Orange County, Ability First, and the Orange County Therapy Art Center. Mother requested SSA close her case. At the October review hearing, the court continued jurisdiction under a plan of family maintenance services.

A different social worker, Damian, was assigned to replace Ortuno. On February 17, 2010, Damian was informed by the child’s behavioral therapist that Mother and Jesus were no longer at their residence. The landlord also told Damian they had moved. The landlord thought Mother may have moved to North Carolina. Mother’s employer stated she quit her job the week of February 8 and said she was moving to

Mexico. Jesus had not attended school since February 7. Mother did not respond to any of Damian's telephone messages. The court issued warrants for both Jesus and Mother, over Mother's counsel's objections.

In a later report, Damian stated Mother called her two weeks after absconding with Jesus. Mother provided an address in North Carolina after Damian left two messages informing Mother a warrant would be issued for her arrest if she failed to stay in contact. Mother told Damian she moved to start over in a new place, without dealing with the problems they had in California. Mother had also been in contact with social services in North Carolina, seeking help transferring her case file.

A social worker in North Carolina visited the address Mother provided and she reported two men at the residence stated Mother was not home. Later that day, the North Carolina social worker returned to Mother's address with the police to collect Jesus and return him to California. They called Damian for assistance with translating what was happening to Mother in Spanish. Damian recalled, Mother was upset, and said, "This is why people don't do the right thing, I gave you my address so you can send my paperwork and I haven't received anything, but you send me a worker." Damian asked Mother to put some items together for the child, but Mother refused, saying, "No, I'm not going to, you[ are] taking him, you handle it, but I want him returned to me the way you are taking him, no marks or anything." Mother refused to help awaken the child or give provisions for his care. The police officer carried Jesus out to the car and he was eventually returned to California and placed at Orangewood.

On March 22, 2010, SSA filed a section 387 supplemental petition. It alleged that after 39 months of family maintenance services, Mother left the state without notifying SSA. The child was taken into custody on March 12. Mother's whereabouts were unknown from February 13 to March 12, 2010, during which time Mother did not obtain "medical, developmental and educational care for the child, Jesus, in a timely

manner” placing him at risk due to his significant developmental delays and blindness. The court issued temporary detainment orders and appointed counsel for Mother.

The next section 364 review was continued to trail the section 387 petition. SSA filed a report in April 2010, recommending the court declare dependency and not offer any further reunification services to Mother. The social worker, Aurora Grajeda-Romero based her recommendation on section 361.5, subdivision (b)(15), permitting the court to deny services when a parent has kidnapped a child from placement and refused to return the child, as well as the statutory provisions limiting the amount of reunification services offered to a parent to 12 months. Mother had received over 12 months of reunification services before Jesus was returned to her in 2007, and then Mother received over 39 months of family maintenance services.

On April 5, Mother contacted Damian and said she had no telephone and no money to fly to California to visit Jesus. She denied abandoning Jesus, and she hoped he was alright. Over a week later, on April 14, Mother arrived at Orangewood and requested to see Jesus. She was not permitted to see Jesus. The following day, Mother left a message for Grajeda-Romero asking about visits.

Jesus was again prescribed melatonin to help with his sleep issues. An IEP was rescheduled, but the social worker recommended limiting Mother’s rights because she had not presented herself to SSA. She also recommended Jesus have a Court Appointed Special Advocate (CASA). Jesus’s teacher reported Jesus had been making progress before he left, and Jesus appeared to be the same upon his return. The teacher stated it was as if Jesus had never left because Jesus quickly returned to his old routine of going to his toys, turning on his radio, and using his “communication box.” The teacher stated Jesus was very “loved” at the school and everyone was happy to have him back. Jesus was reported to be in a calm and happy mood at school.

Social worker Grajeda-Romero interviewed Mother. During their conversation, Mother denied the 2006 allegation about the baggy of cocaine contained in

the original petition, claiming the story was fabricated by someone who wanted to get her in trouble. Mother admitted she had not drug tested consistently but said it was because she was not a drug addict, and she did not like having someone watch her in the restroom. Mother admitted she had not arranged for a place to stay when she left for North Carolina, but she had been told by “people” in California that rent was cheap out of state. She initially stayed in a hotel, but then found a room costing \$150 per month. She made efforts to find Jesus a school by looking in the yellow pages, and then going to Centro Hispano for assistance. She also got a list of referrals for medical and dental services. Mother had made an appointment for developmental screening, and she had started making arrangements for afterschool care. She claimed she did not intend to harm Jesus by moving, and she did not tell the social worker about the move because she did not have an address or phone number for where she would be living.

Mother was not happy that Jesus had been returned to Mark Twain Elementary School. She believed there were too many instances where Jesus was hurt there. She told the social worker she once saw a teacher’s aide resting her feet on Jesus while she sat in a swing.

Mother had a monitored visit with Jesus on April 26, 2010. During the visit, Mother talked about the case, stating Jesus was going to be in a program in North Carolina that would have permitted her to have a full-time job. She thought North Carolina had better programs for Jesus, and she only wanted what was best for him. Following this visit, Jesus had an hour-long tantrum. However, it was reported that overall Jesus’s sleeping patterns had improved, and he began music therapy every Monday. Mother was provided with referrals for monitored visits, in-office counseling, parenting education, and drug testing.

Mother pled no contest to the section 387 petition and waived her right to a trial on the petition. The court sustained the petition and set the matter in July 2010 for a contested disposition hearing along with the trailing section 364 hearing.



At the contested disposition hearing, Mother testified. She had completed parenting classes. She was the model student i.e., punctual, focused, and she participated in class discussions. She had many negative drug tests in June. She had begun individual counseling. She was seen watching Jesus being picked up by the bus from Orangewood. Mother consistently visited Jesus and she was appropriate with him.

Mother testified she went to North Carolina to find a new school for Jesus. She learned about North Carolina from a lady she had met at the bus stop, and who had a son exactly like Jesus. Mother learned from this lady information about North Carolina and that Jesus would get well there. She waited six months after meeting this lady to leave, because Mother determined Jesus was not going to an adequate school. She wanted to find a special school for a child like Jesus. She admitted she did not know anyone in North Carolina, and she had not located an appropriate school for him there before she left.

Mother admitted she was in North Carolina for over one week before she contacted social services in North Carolina to ask for help transferring her case. Mother claimed social services suggested she contact her social worker in California for assistance with the transfer. Mother asserted she did not contact Damian sooner because she did not have an address and she needed time to find Jesus a new school. Mother claimed she did not know she could not leave the state with Jesus. However, later Mother admitted she knew it was part of her case plan to always inform the social worker about where she was living. Mother assured the court she would not leave the state again because she knew what would happen now. She was employed, and she would continue to participate in services.

The court determined SSA had not met its burden under section 361.5, subdivision (a)(15), but that under section 361.5, subdivision (a)(1) and (2), services need not be provided. It concluded there was clear and convincing evidence to support removing custody from Mother. The court noted Mother had issues with being open and

receptive to services. She had a troubling history of rudeness to social workers and school staff, which was significant because it hampered her ability to meaningfully engage in services Jesus needed. The court was concerned Mother did not “get it” and would again abscond with her son. The court stated Mother’s sudden move out-of-state was ill-conceived and in some aspects dangerous to a special needs child.

## II

Section 387 provides in relevant part: “(a) An order changing or modifying a previous order by removing a child from the physical custody of a parent . . . and directing placement in a foster home . . . shall be made only after noticed hearing upon a supplemental petition. [¶] (b) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child . . . .”

A proceeding on a section 387 petition involves a bifurcated hearing. In the first phase, the juvenile court follows the procedures relating to a jurisdictional hearing on a section 300 petition. (*In re Jonique W.* (1994) 26 Cal.App.4th 685, 691 (*Jonique W.*); Cal. Rules of Court, rule 5.565(e).) At the conclusion of the jurisdictional phase of the section 387 hearing, the juvenile court is required to determine by a preponderance of legally admissible evidence whether the factual allegations of the supplemental petition are or are not true and whether the allegation the previous disposition has not been effective is or is not true. (*Jonique W., supra*, 26 Cal.App.4th at p. 691.) As part of this factfinding process, the ultimate jurisdictional fact necessary to modify a previous placement is that the previous disposition has not been effective in the protection of the child. (*Ibid.*)

If the jurisdictional facts are found to be true, then a separate “dispositional phase” follows to determine the modified placement. (*Jonique W., supra*, 26 Cal.App.4th at p. 691.) In determining the disposition on the section 387 supplemental petition, the

procedures related to disposition hearings on original section 300 petitions apply (*Ibid.*) because “the supplemental petition can have the same drastic result of removing the dependent child from his or her custodial parent.” (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1077 (*Kimberly R.*)). Therefore, the standard for removal of a child on a supplemental petition is the same as removal on an original petition--clear and convincing evidence of conditions set out in section 361, subdivision (c). (*Kimberly R., supra*, 96 Cal.App.4th at p. 1077.)

Section 361, subdivision (c), provides that minors who are dependents of the juvenile court cannot not be removed from the physical custody of the parent or guardian with whom they resided when the petition was filed, without a finding by the trial court, under the clear and convincing evidence standard, of any of the specific circumstances set out in subdivision (c)(1)-(5). Relevant to this case is subdivision (c)(1), which provides the child can be removed if there is clear and convincing evidence: “(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody. . . .”

We apply the substantial evidence test in reviewing the trial court’s determination that a child must be removed, viewing the record in the light most favorable to the removal order. (*Kimberly R., supra*, 96 Cal.App.4th at p. 1078.) In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

In this case, Mother pled no contest, and the court found true the allegations of the petition in the jurisdictional phase of the hearing. Mother’s writ petition only

challenges the court's ruling at the dispositional phase, removing custody of Jesus from Mother. She argues substantial evidence did not exist there was a substantial danger to Jesus if he were returned to Mother's care. Mother acknowledges she should have notified SSA prior to relocating to North Carolina, but she asserts her motivation was appropriate because she thought moving would help her son. Mother claims she acted as a "prudent parent" once arriving in North Carolina and Jesus was not harmed by the move. Mother concedes the "circumstances throughout the case were not perfect," and she did not completely comply with her case plan. Nevertheless, despite her shortcomings Mother states she was permitted to care for Jesus under a plan of family maintenance services and her past history never placed Jesus in significant risk of harm. To the contrary, Mother contends she and Jesus share a close bond and the harm caused by his removal "was more substantial and realistic than any perceived risk to the [child] from Mother leaving to North Carolina without initially informing SSA and from her missing a few drug tests."

We conclude the record in this case contains substantial evidence that there was substantial danger to Jesus if he remained in Mother's custody and that removal of the child was warranted. As discussed above, the record indicates that after several months of being uncooperative and defiant to the social workers, her son's school staff members, and the many people providing her weekly services, Mother made the rash decision to move out of state. The court correctly concluded the move was "ill-conceived" because she had not located a school, a residence, a job, or any replacements for the many services required by her severely disabled son. In her writ petition, Mother fails to appreciate the court was less concerned with her failure to notify SSA of the move, than with her apparent complete lack of understanding about the intensive care Jesus requires.

Mother's history of minimizing her child's medical needs has been a cause for great concern throughout these dependency proceedings. In the months leading up to

Mother's abrupt move, the social worker considered detaining Jesus due to Mother's failure to find a stable residence and her resistance to the necessary services being provided. The social worker opined Mother's pattern of putting her own needs first and avoiding responsibility by relocating and blaming other people put Jesus at risk of harm. Noticeably missing from Mother's petition is any discussion of this reasonable assessment.

We note Mother's decision to move based merely on the whisper of hope provided from a lady at a bus stop is suspect. Immediately before the move, Mother complained about the pressures placed on her by SSA to comply with her case plan, her growing tensions with school staff, and her financial troubles. It was reasonable for the trial court to conclude the move was motivated in part by an irresponsible attempt to escape her troubles in California. We note Mother quit her job and moved away from the safety net of services provided in California without first personally investigating the availability of similar programs in North Carolina. This failure defies the claim she was only motivated by a desire to help Jesus. Moreover, it demonstrated that despite years of classes and counseling Mother lacked the ability to realize or provide appropriate care for her special needs child.

Mother asserts that Jesus has not been harmed in three years, despite her failure to ever completely comply with her case plan. This assertion does little to help her case. Indeed relevant to the court's decision is the undisputed fact Mother has received several years of services, classes, and counseling but has never progressed to a point where she has been able to adequately care for her special needs child by herself. And rather than things getting better for Mother and Jesus with the passage of time, matters were rapidly deteriorating in the months before Mother absconded to North Carolina. Mother was increasingly hostile towards the people trying to help, there were significant financial issues, and frequent moves that negatively affected Jesus behavior. As noted, Mother showed no signs of understanding or securing the level of care her

child needed. She placed Jesus in direct risk of harm by moving to a place where there would be potentially greater financial struggles, unstable living conditions, and none of the services Jesus required. Mother's recent actions signaled to the trial court that Jesus would be "in substantial danger" to his "physical health, safety" and "physical and emotional well being" if he were returned to Mother's care. We note actual physical harm to the child is not required to support a removal order; rather, a substantial risk of danger to the child will suffice under the statute. (See *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1656-1658.) In light of all of the above, we conclude substantial evidence supports the juvenile court's conclusion the risk of harm to the child could not be eliminated except by removal of the child from Mother's care.

### III

The writ petition is denied.

O'LEARY, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.